

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant : Todd A. Newville
Serial No. : 09/843,536
Filed : April 25, 2001
Title : INFORMATION PORTAL

Art Unit : 2683
Examiner : Sharad K. Rampuria
Conf. No. : 7416

Mail Stop Appeal Brief - Patents

Commissioner for Patents
P.O. Box 1450
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SECOND BRIEF ON APPEAL

(1) Real Party in Interest

The real party in interest is Gannett Satellite Information Network, Inc., a Delaware corporation having a place of business at 7950 Jones Branch Drive, McLean, Virginia as evidenced by an assignment executed April 2, 2004 and recorded at the U.S. Patent Office on April 5, 2004, at Reel/Frame 014491/0430.

(2) Related Appeals and Interferences

Neither Appellant, nor Appellant's legal representative, nor the assignee are aware of any appeals or interferences that will directly affect or be affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

No claims are allowed. Claims 3-5 have been cancelled. Claims 1-2 and 6-20 are rejected and on appeal. Of these, claims 1, 2, 19, and 20 are independent.

(4) Status of Amendments

No amendments have been made after a final rejection.

(5) Summary of Claimed Subject Matter

1. A communication system comprising:	Shown generally in FIG. 1.
a stationary transceiver defining an information portal in a vicinity thereof; and	Stationary transceivers (14a-n) are described on page 4, lines 6-12 as defining corresponding information portals 16a-n . These are also shown in FIG. 1.

a local server in communication with said transceiver, said local server being configured	A local server 12 is described on page 4, lines 6-12 and shown in FIG. 1.
to respond to entry of a mobile processing-system present within said information portal, and	See page 5, lines 13-16. See also page 8, lines 24-26.
to provide, to said mobile processing system, data previously requested for said mobile processing system prior to entry of said mobile processing system into said information portal.	See page 7, line 21 to page 8, line 26.

2. A communication system comprising	
a stationary transceiver defining an information portal in a vicinity thereof;	Stationary transceivers (14a-n) are described on page 4, lines 6-12 as defining corresponding information portals 16a-n . These are also shown in FIG. 1.
a local server in communication with said transceiver, said local server being configured	A local server 12 is described on page 4, lines 6-12 and shown in FIG. 1.
to identify and respond to a mobile processing-system present within said information portal, and	See page 5, lines 13-16. See also page 8, lines 24-26.
to perform a function on the basis of the identity of said mobile processing-system, said function being selected from the group consisting of:	See page 5, line 19 - page 7, line 2.
permitting building access to a portion of said building; and	See page 4, lines 22-26.

controlling an elevator in said building.	See page 4, lines 5-11.
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19. A communication system comprising:	
a plurality of stationary transceivers, each configured for wireless communication with a mobile processing system present in a corresponding information portal; and	Stationary transceivers (14a-n) are described on page 4, lines 6-12 as defining corresponding information portals 16a-n . These are also shown in FIG. 1.
a server system in communication with each of said stationary receivers, said server system having a link to a global computer network and thereby providing said mobile processing system with wireless access to said global computer network said server system including a server configured to provide, to said mobile processing system	A local server 12 is described on page 4, lines 6-12 and shown in FIG. 1. See page 7, lines 8-10 for "link to a global computer network." For "wireless access to said global computer network," see page 8, lines 26-31 and page 7, lines 13-16.
In response to entry of said mobile processing system into an information portal, data previously requested for said mobile processing system prior to entry of said mobile processing system into said information portal.	See page 7, line 21 to page 8, line 26.

20. A method for providing a mobile processing system with wireless access to a global computer network, said method comprising:	
maintaining an information portal;	See page 4, lines 6-12.

establishing wireless communication between said mobile processing system and a server system following entry of said mobile processing system into said information portal; and	See page 5, lines 13-16. See also page 8, lines 24-26.
causing data previously requested for said mobile processing system prior to entry of said mobile processing system into said information portal to be provided to said mobile processing system, in response to entry of said mobile processing system into said information portal.	See page 7, line 21 to page 8, line 26.

Stationary transceivers **14a-n** in the locations listed in claim 8 are disclosed on page 9, lines 1-5, on page 4, lines 23-30, and between page 5, line 30 and page 6, line 13.

The use of a LAN **30** to provide a communication link (claim 9), and in particular a wireless communication link (claim 10) is disclosed on page 5, lines 10-13, and illustrated in FIG. 1..

A fulfillment server **46**, as recited in claim 11, is disclosed at page 7, lines 8-17, and illustrated by FIGS. 3 and 4.

A local server having a cache as recited in claim 12 is disclosed at page 7, lines 24-29.

A case in which the fulfillment server **46** accesses a global computer network **32**, as recited in claim 13, is disclosed on page 7, lines 8-12, and illustrated in FIGS. 3 and 4.

A fulfillment server **46** having a user-interface **54** as recited in claim 11 is disclosed on page 7, lines 21-29, and illustrated in FIG. 3.

An access control unit, as recited in claim 6, is described on page 5, lines 4-9, and on page 6, lines 24-26.

(6) Grounds of Rejection to be Reviewed on Appeal

1. Independent claim 1 and its progeny, claims 7-18, as well as independent claim 20, stand rejected as being rendered obvious under § 103(a) by the combination of *Orlen*, et al., U.S. Patent 5,579,535 and *Wynblatt*, et al., U.S. Patent 6,209,696.
2. Independent claim 2 and its dependent claim 6 stand rejected as being rendered obvious under § 103(a) by the combination of *Orlen*, et al., U.S. Patent 5,579,535 and *Sirag*, et al., U.S. Patent 6,109,396.
3. Independent claim 19 stands rejected as being rendered obvious under § 103(a) by the combination of *Orlen*, et al., U.S. Patent 5,579,535 and *Wynblatt*, et al., U.S. Patent 6,209,696.

(7) Argument

Section 103 rejection of claims 1 and 20

In rejecting claim 1, the Examiner appears to have established the following correspondence between the elements recited in the claim and structures disclosed in *Orlen* and the structures disclosed in *Wynblatt*:

1. A communication system comprising:	
a stationary transceiver defining an information portal in a vicinity thereof; and	Any one of <i>Orlen</i> 's Teleport base stations 12-18 is regarded as a "stationary transceiver." Each base station defines a coverage area, which is regarded as corresponding to the "information portal."
local server in communication with said transceiver, said local server being configured	<i>Orlen</i> 's network control center 32 , which is in communication with all the Teleport base stations.
to respond to entry of a mobile processing-system present within said information portal, and	In <i>Orlen</i> , a "mobile processing system" corresponds to any one of the radiotelephones 20, 22, 24

to provide, to said mobile processing system, data previously requested for said mobile processing system prior to entry of said mobile processing system into said information portal.	In <i>Wynblatt</i> , the billboard transceiver: defines an information portal, receives the laptop's transmission containing gas remaining and gas mileage, and sends the laptop information about the closest gas station.
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Wynblatt* fails to remedy the deficiency in the teaching of *Orlen

Given the above correspondence, the question to be answered is as follows:

Is the information about the closest gas station requested *before* the laptop enters the coverage area of the billboard transceiver?

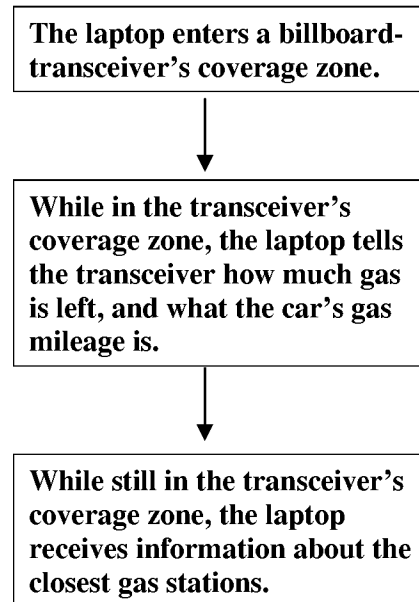
The Examiner appears to regard the answer as being “yes.” For reasons set forth below, Appellant disagrees.

Wynblatt describes a system of short-range transceivers, each of which has a coverage zone. These transceivers can be placed in stores, billboards, and moving trucks. When a laptop enters one of these coverage zones, it receives information from the transceiver. This information is generally pertinent to the location of the transceiver, and may include a URL associated in some way with that location.

The Examiner draws particular attention to *Wynblatt*'s teaching of what happens when a laptop-carrying car drives into the coverage zone of a billboard-mounted transceiver. Following entry into the coverage zone, the laptop transmits, to the billboard-mounted transceiver, information about how much gas is left in the tank, and the car's current gas mileage. In response, the transceiver provides information about nearby gas stations.

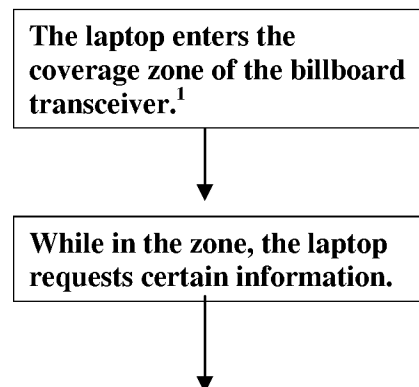
Presumably, the Examiner regards the laptop's transmission of remaining gas and the car's gas mileage to be a request for data. In that case, the information about the closest gas stations would be “data previously requested for said mobile processing system.”

Thus, *Wynblatt* teaches the following procedure:

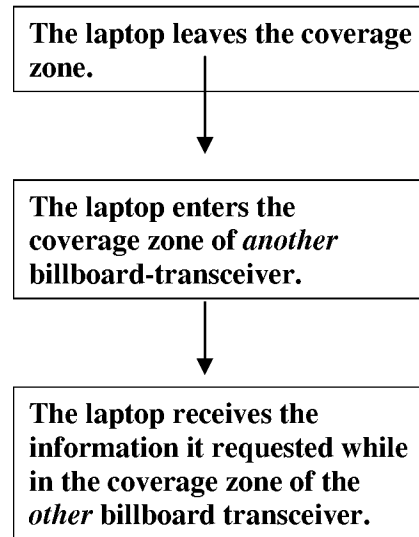


Thus, in *Wynblatt*, the laptop receives information that was requested *after the laptop has already entered* the billboard transceiver's coverage zone **104**. *Orlen* therefore fails to teach receiving information that was requested *prior* to entry into zone **104**.

The foregoing operation should be contrasted with the following sequence of events, in which the information is requested *before* entering the information portal that ultimately provides the requested information.



¹ This describes one embodiment of the invention. Note that the claim does not specify where the request must be made. Thus, the request need not be made from another information portal, but could be made, for example, using a conventional wired connection.



Claim 1 recites (with paragraphs numbered to facilitate discussion):

[1] a stationary transceiver defining *an information portal* in a vicinity thereof

[2] a local server in communication with said transceiver, said local server being configured

[2.1] to respond to entry of a mobile processing-system present within *said information portal*, and

[2.2] to provide, to said mobile processing system, data previously requested for said mobile processing system prior to entry of said mobile processing system into *said information portal*.

A careful reading of claim 1 reveals that the information portal in paragraphs [1] and [2.1] must be *the same portal* as that in paragraph [2.2]. The error in the Examiner's rejection is that he has used a *different portal* for paragraph [2.2].

In *Orlen*, a teleport base station defines zone **104**. This zone **104** must therefore correspond to "an information portal" recited in paragraph [1] of claim 1.

In paragraph [2.1], the claim requires responding to entry of the telephone into zone **104**. Appellant agrees that *Orlen* teaches this.

It is in paragraph [2.2], that Appellant and Examiner disagree. Paragraph [2.2] requires that the telephone receive data that was requested *before* the telephone entered “*said* information portal,” i.e. zone **104**. But in *Orlen*, the telephone requests information *after* it has already entered zone **104**.

The Examiner's appears to have identified zone **104** with “information portal” in paragraphs [1] and [2.1]. But in paragraph [2.2], the Examiner has made zone **102** be “said information portal.” This is improper. Having defined zone **104** as “an information portal” in paragraph [1], the same zone **104** must play the role of “information portal throughout the claim.

Wynblatt is no different. In *Wynblatt*, a car **14** carrying a laptop **12** enters an “information portal” defined by a short-range transceiver **18** mounted on a billboard **20**. Shortly after entering this information portal, the laptop sends the transceiver information about the car. Then, *before the car leaves the information portal*, the transceiver returns information about nearby gas stations.

Thus, in *Wynblatt*, like in *Orlen*, the entire transaction takes place *within the same information portal*. There is no teaching in either *Orlen* or *Wynblatt* of requesting information before entering an information portal, and then receiving information in response to that request following entry into an information portal.

Appellant's claimed invention offers a clear advantage over what *Wynblatt* teaches.

Suppose, in *Wynblatt*, the car **14** were to drive by the billboard **20** so fast that it left the coverage zone before the transceiver **18** had a chance to return the information requested. In such a case, the laptop **12** would never receive information about nearby gas stations.

In contrast, if one were to modify *Wynblatt* as Appellant has disclosed, one could have a system in which the car enters the coverage zone of another billboard transceiver a few miles

down the road. Upon entering that coverage zone of this second billboard transceiver, the laptop could receive the gas station information that it had requested some minutes earlier, when it sped through the coverage zone of the first billboard transceiver.

By way of analogy, when ordering a take-out meal, one could (1) go the restaurant, order the meal, and wait until it is prepared, or (2) call ahead to order the meal, and pick it up when one reaches the restaurant. Both *Orlen* and *Wynblatt* teach systems more like the former, whereas the claim recites something more like the latter.

No motivation to combine the references

Orlen and *Wynblatt* have in common the use of radio waves to communicate information. Beyond that, they have little in common. *Orlen* describes a cell phone system in which users talk to each other using their cell phones; *Wynblatt* describes a system in which transceivers send web pages to laptops.

Orlen is thus concerned with maintaining a virtual circuit for voice communication between two cell phones, whereas *Wynblatt* uses a packet switched network to communicate data between a laptop and a base station. The fact that both *Orlen* and *Wynblatt* happen to use radio waves for communication is only a superficial resemblance.

The Examiner suggests that one of ordinary skill in the art would have found it obvious to modify *Orlen* as taught by *Wynblatt* “in order to informing [sic] the targeted information to the user at an appropriate distance.”²

It is unclear exactly what the Examiner is attempting to articulate. Appellant speculates that the perhaps Examiner is suggesting that one of ordinary skill in the art would have found it obvious to modify *Orlen* to provide the laptop with information about gas stations before the laptop actually reached the gas stations (i.e., at “an appropriate distance” from the gas stations.

It appears, however, that *Wynblatt* already carries out this function without any help from *Orlen*. One of ordinary skill in the art who sought to provide information about a location before

² *Office Action* of June 11, 2007, page 4.

a user reached that location would simply follow the teaching of *Wynblatt*. *Orlen* adds nothing that would assist one of ordinary skill in the art in carrying out this function. Hence, there would be no reason for one of ordinary skill in the art to modify *Orlen* as taught by *Wynblatt* in order to carry out *Wynblatt*'s function.

The Examiner then draws attention to the following passage from *Wynblatt* as suggesting to one of ordinary skill in the art that the references should be so combined:

“The mobile information terminal includes a receiver, a URL queue and a WWW renderer/browser. The local agent includes a short-range transmitter to distribute information pointers to the mobile information terminal and a mechanism for transferring data into the transmitter.”

The foregoing passage merely describes well-known components of the billboard transceiver and of the laptop. It is unclear how knowing of these components would suggest to one of ordinary skill in the art that one ought to provide the laptop with information requested by the laptop before the laptop entered the coverage zone of the local agent (i.e. the billboard transceiver).

Claim 20 includes limitations similar to claim 1. Accordingly, Claim 20 is patentable for at least the reasons set forth above in connection with claim 1.

Section 103 rejection of claim 19

Claim 19 recites limitations similar to claim 1 and is patentable for at least the same reasons. However, claim 19 also recites a server system that has “a link to a global computer network.”

The Examiner appears to regard *Orlen*'s terminal **40** (shown in FIG. 1) as being a global computer network, or at least a computer in communication with a global computer network.

There is no disclosure in *Orlen* that the terminal **40** is in communication with a global computer network. As best understood, the terminal **40** is used only for data entry of local information into the network control center **32**.³

³ *Orlen*, beginning at col. 3, line 60.

In addition, claim 19 requires that any “link to a global computer network” be one that provides the mobile processing systems with “wireless access to said global computer network.”

Nothing in *Orlen* suggests that cell phones **20-24** have wireless access to anything but the network control center **32**.

The Examiner has not cited *Wynblatt* as remedying this deficiency in the teaching of *Orlen*. Accordingly, the combination of *Orlen* and *Wynblatt* fails to teach all the limitations of claim 19.

Accordingly, the § 103 rejection of claim 19 is improper both for reasons discussed in connection with claim 1 and because the combination of *Orlen* and *Wynblatt* fails to disclose each and every limitation of the claim.

Section 103 rejection of claim 8

Claim 8 adds to claim 1 the additional limitation that the stationary transceiver be

“disposed at a location selected from the group consisting of an elevator, a building lobby, and a vehicle”

The cited text at column 9, lines 3-37⁴ states only that the base stations are located in different geographic areas. Two base stations **12, 14** can certainly be in “different geographic areas” without one having to be in an elevator, a building lobby, or a vehicle. Therefore, the cited text fails to teach a base station that is in an elevator, a building lobby, or a vehicle.

Wynblatt teaches transceivers mounted on billboards and certain other public places, but not in a building lobby, elevator, or vehicle. Accordingly, *Wynblatt* fails to remedy this deficiency in the teaching of *Orlen*. The section 103 rejection of claim 8 is therefore improper.

Section 103 rejection of claims 9 and 10

Claim 9 adds to claim 1 the additional limitation that

“said local server and said stationary transceiver are in communication across a local area network.”

⁴ Quoted earlier in connection with claim 2.

The Examiner has already indicated that claim 1's "local server" is the *Orlen* network control center **32** and that claim 1's "stationary transceiver" is one of the transceivers **12, 14, 16, 18** in FIG. 1 of *Orlen*.

According to FIG. 1, the network control center **32** and the transceivers **12, 14, 16, 18** are in communication over the PSTN **30**. But the PSTN is not a "local area network" as recited in claim 9. It is a public switched telephone network.⁵

The cited text at column 5, lines 11-28 essentially states that cordless telephones provide wireless access to the telephone network **30**. There is no discussion either in the cited text or in FIG. 3 about how the network control center **32** communicates with the transceivers **12-18**. In particular, there is nothing to contradict FIG. 1's representation of the transceivers **12-18** and the network control center **32** as being in communication through the PSTN **30** rather than "across a local area network."

Wynblatt fails to remedy this deficiency in the teaching of *Orlen*. It is apparent that the § 103 rejection of claim 9 is improper because the combination of *Wynblatt* and *Orlen* fails to disclose each and every limitation of claim 9.

Claim 10 adds to claim 9 the additional limitation of wireless communication between the local server and the stationary transceiver. The § 103 rejection of claim 10 is therefore improper for the same reasons discussed above.

Section 103 rejection of claim 11

Claim 11 adds to claim 1 the additional limitation of

"a fulfillment server in communication with said local server, said fulfillment server having access to a wide area network."

Since the claimed "local server" is deemed to correspond to *Orlen*'s network control center **32**, whatever structure corresponds to the claimed "fulfillment server" ought to be in communication with this network control center **32**.

⁵ *Orlen*, col. 2, lines 54-55.

Inspection of *Orlen*'s FIG. 1 reveals that the only structures in communication with the network control center **32** are: (1) the PSTN **30**; (2) a modem **42**; (3) an ISDN **44**; and (4) a paging transmitter **46**. None of these devices could reasonably be characterized as a server, much less a "fulfillment server." Moreover, none of the above four devices have "access to a wide area network".

The Examiner states that *Orlen* teaches the fulfillment server between column 3, line 66 and column 4, line 26. But the cited text merely describes the way data is entered into the network control center **32** and later distributed to all the transceivers **12-18**. Nothing in the cited text suggests a fulfillment server that: (1) is in communication with the network control center **32**; and (2) has "access to a wide area network."

The Examiner has not indicated that *Wynblatt* does anything to remedy this deficiency in the teaching of *Orlen*. Therefore, the § 103 rejection of claim 11 is improper.

Section 103 rejection of claim 12

Claim 12 adds to claim 11 the additional limitation of a local server that includes

"a cache for temporary accumulation of information from said fulfillment server to be relayed to said mobile processing system."

The Examiner's remarks suggests that a cache is somehow inherent in *Orlen*'s data-entry terminal **40**. Since claim 12 requires that the cache be in the local server, it must follow that the Examiner regards *Orlen*'s terminal **40** as the claimed "local server."

But, as is apparent from FIG. 1, the terminal **40** is not even in communication with any transceiver **12, 14, 16, 18** as required by claim 1, from which claim 12 ultimately depends. Hence, the terminal **40** cannot possibly be regarded as a "local server."

Moreover, if the terminal **40** were deemed to be a "local server," then it ought to be in communication with a "fulfillment server" so that it can temporarily accumulate information to be relayed to the telephones **20-24**. But there is no fulfillment server shown in *Orlen*'s FIG. 1. Nor is anything like a fulfillment server disclosed in *Orlen*'s specification.

Accordingly, there appears to be no structure in *Orlen* that could reasonably correspond to the local cache as claimed. Nor does the Examiner point to any structure in *Wynblatt* that might meet this claim limitation. The §103 rejection of claim 12 is therefore improper.

Section 103 rejection of claim 13

Claim 13, which depends on claim 11, recites the additional limitation that the

“wide area network comprises a global computer network.”

To support the rejection of claim 13, the Examiner cites the same text as was cited in claim 12. But nothing in that text suggests the existence of a global computer network. Nor does the Examiner draw attention to any teaching or suggestion of this limitation in *Wynblatt*. Accordingly, the §103 rejection of claim 13 is improper.

Section 103 rejection of claim 14

Claim 14, which depends on claim 11, recites the additional limitation that

“said fulfillment server includes a user-interface for enabling a user to cause said fulfillment server to collect selected information.”

According to the Examiner, the keypad on the radiotelephones in *Orlen* amount to such a user interface.

However, the keypad in the cited text is a user interface of the radiotelephone, not of a fulfillment server.

Unless the Examiner is now proposing that the radiotelephones are in fact fulfillment servers, there appears to be no structure in *Orlen* to correspond to a fulfillment server.

The Examiner has not drawn attention to any teaching in *Wynblatt* of a user-interface for a fulfillment server. Accordingly, *Wynblatt* fails to teach this limitation in the teaching of *Orlen*. Therefore, the §103 rejection of claim 14 is improper.

Claims 15-18 all depend on claim 14 and are allowable for at least the same reasons.

Section 103 rejection of claim 2

Claim 2 recites having a local server that either permits “building access to a portion of said building” or that controls “an elevator in said building.”

The Examiner considers the claim as being rendered obvious by the combination of *Orlen* and *Sirag*.⁶ In particular, the Examiner states that one of ordinary skill in the art would have found it obvious to modify *Orlen* as taught by *Sirag*

“in order to entering [sic] elevator calls transmitted by electromagnetic radiation between the elevators and a portable device borne by a user while the user is some distance from the elevator, completing the stop for the call only if the call is verified by the user being in the immediate proximity of the elevator, and entering a car call only if the user enters the cab.”⁷

No prima facie case of obviousness

To establish a prima facie case of obviousness,

“either

the references must expressly or impliedly suggests the claimed invention

or

the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.”⁸

In this case, the Examiner has not asserted that the references suggest the claimed invention. Hence, according to *Clapp*'s two-part test, any prima facie case of obviousness would have to rely on some “convincing line of reasoning.”

However, the line of reasoning advanced by the Examiner is plainly illogical. Essentially, the Examiner asserts that it would have been obvious to modify *Orlen* as taught by *Sirag* for the purpose of achieving what *Sirag* achieves all by itself.

⁶ *Sirag*, et al., 6,109,396.

⁷ Office Action of June 11, 2007, page 8.

⁸ *Ex Parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985), see also MPEP 2142.

Stripped to its bare essentials, the Examiner is asserting that it would have been obvious to modify reference A as taught by reference B to carry out a function that is *already* carried out by reference B.

The above reasoning make no logical sense. If one of ordinary skill in the art wanted to carry out the function of reference B, he would simply use reference B. There would be no reason to modify reference A. In fact, reference A is not required to carry out the function of reference B. It's only purpose is to supply claim limitations missing from reference B.

In developing a "convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious," the Examiner has done little more than quote language from *Sirag* that describes the intended function of *Sirag's* system. But the *Sirag* system already carries out its intended function. Therefore, one of ordinary skill in the art seeking to carry out the function described by the Examiner would have found it obvious just to use the *Sirag* system as described, without having to combine it with anything.

The Examiner's reasoning for modifying *Orlen* as taught by *Sirag* can hardly be characterized as "a convincing line of reasoning" because it does not depend at all on anything in *Orlen*. In fact, one could have used any reference in place of *Orlen* and still relied on the same "convincing line of reasoning." Accordingly, the Examiner has not made a prima facie case of obviousness.

No expectation of advantage in combining references

According to the MPEP,

"[t]he strongest rationale for combining references is a recognition, expressly or impliedly in the prior art or drawn from a convincing line of reasoning...that some advantage or expected beneficial result would have been produced by their combination."⁹

In particular, the Federal Circuit has indicated that one test of obviousness is

⁹ MPEP 2144.

“(a) whether a combination of the teachings of all or any of the references would have suggested (expressly or by implication) the possibility of achieving further improvement by combining such teachings along the line of the invention in suit,”¹⁰

The Examiner has failed to show why modifying *Orlen* as set forth in *Sirag* would lead to “further improvement” in the way *Orlen* carries out its function. Conversely, the Examiner has failed to show why modifying *Sirag* in a way that incorporates the teaching of *Orlen* would lead to “further improvement” in how *Sirag* carries out its function.

Accordingly, the Examiner's proposed motivation to modify *Orlen* as described in *Sirag* for the purpose of carrying out the function that *Sirag* carries out by itself does not amount to a motivation to modify *Orlen*. Instead, it amounts to a motivation to forget about *Orlen* altogether and to simply use the system of *Sirag*.

Appellant agrees that *Sirag* teaches a system for controlling elevators. But the fact that both claim 2 and *Sirag* are directed to controlling elevators does not mean that *Sirag*, either by itself or in combination with *Orlen*, renders claim 2 obvious.

***Orlen* is non-analogous art**

Moreover, *Orlen* fails to satisfy the requirements for being analogous prior art. The Federal Circuit has held that before a reference can be relied upon in rejecting a claim:

“the reference must either be in the field of appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned.”¹¹

Thus, *Orlen* must satisfy a two-part test before it can be regarded as analogous art.

The first part of the two-part test requires articulating the Appellant's field of endeavor. For claim 2, the Appellant's field of endeavor is to carry out certain building access functions, including controlling of an elevator in a building.

¹⁰ *In re Sernaker*, 702 F.2d 989, 994-995, 217 USPQ 1, 5-6 (Fed. Cir. 1983)

¹¹ *In re Oetiker*, 977 F.2d 1443, 1446; 24 USPQ 2d 1443, 1445 (Fed. Cir. 1992).

Orlen has nothing to do with controlling building access functions. *Orlen* is concerned with a cell phone system. The endeavor of building a cell phone system is clearly quite different from the endeavor of controlling building access. A cell phone system uses cell phone towers to maintain a virtual circuit between two cell phones. As the cell phone moves, responsibility for servicing the call changes from one tower to the next. The cell phone system must provide a way to switch towers as this occurs. In cell phone systems, towers are placed quite far apart from each other, and cell phones are expected to communicate over significant distances. Thus, the design of cell phone systems brings up issues of multipath reflection, interference, antenna placement, and a host of other issues that are irrelevant to controlling building access.

In contrast, controlling either building access or elevators in a building involves activities within a very limited area, namely a single building, and does not involve the establishment and maintenance of virtual circuits between mobile devices. The use of electromagnetic waves to control building access has been limited to short range RFID devices that communicate across several inches of free space with a simple transceiver mounted next to an access point. The issues raised by cell phone systems, in which one maintains virtual circuits between moving devices across hundreds of miles simply do not arise when holding an RFID card a few inches from a reader that unlocks a door.

Even if *Orlen* fails to be in the Appellant's field of endeavor, it might still be regarded as analogous art under the second part of the two-part test, namely whether *Orlen* is pertinent to the particular problem the inventor was trying to solve. The Federal Circuit further elaborated on what it means for a reference to be pertinent. In particular, the Court stated that a reference is pertinent to an inventor's particular problem if it

“logically would have commended itself to an inventor's attention in considering his problem.”¹²

In claim 2, the particular problem with which the inventor was concerned was that of permitting someone to access only selected portions of a building.

¹² *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.3d 858, 26 USPQ 2d 1767 (Fed. Cir. 1993).

Orlen's discussion of a cell phone system does not describe any restrictions on the activity of a cell phone user. Nothing in *Orlen* limits a caller to only using selected cell towers or calling selected numbers. In *Orlen*, all callers can use all cell towers to call all numbers at all times. *Orlen* has nothing to do with restricting access to anything, much less portions of a building. If anything, *Orlen* seeks to enhance, not restrict access. Accordingly, there is nothing in *Orlen's* description of a cell phone system that "logically would have commended itself to an inventor's attention" in considering the problem of controlling access by a particular person to selected portions of a building.

It is clear that *Orlen* fails both parts of *In re Oetiker's* test for being analogous art. Accordingly, *Orlen* cannot be regarded as analogous art.

Claim 6 depends on claim 2 and is allowable for at least the same reasons, as well as reasons set forth below.

Section 103 rejection of claim 6

Claim 6, which depends on independent claim 2, recites the additional limitation of:

"an access control unit in communication with said local server, said access control unit being controlled by said local server on the basis of the identity of said mobile processing-system."

The Examiner states that the following passage from *Orlen* teaches claim 6's "access control unit"

Portable radiotelephone handsets suitable for use in a CT-2 systems are well known in the art, such as the SILVERLINK.TM. 2000 Personal Telephone manufactured by Motorola Inc. Telepoint base stations suitable for use in a CT-2 systems are also well known in the art, such as the SILVERLINK.TM. Telepoint Base Station manufactured by Motorola Inc. Such portable radiotelephone handsets and telepoint base stations provide voice communication utilizing the well known CT2/CAI communication protocol.

As calls are originated by the radiotelephone handsets, or portable radiotelephones, the calls are logged for billing purposes, among other things, by the telepoint base station, or transceiver station, through which the call is placed. Periodically, such as once a day, the call information collected at each of the telepoint base stations 12, 14, 16 and 18 is transferred to a central control point, such as the network control center 32. One such network control center is the Motorola Network Control Center (MNCC) and Business Management and Billing System (BMBS) for Public Telepoint Systems, which provides, among other things, automatic supervision of all system base stations and flexible billing cycles and automatic entry of

recurring charges.¹³

The cited text discusses: radiotelephones, the network control center **32**, and base stations **12, 14, 16, 18**. All of these structures have already been assigned to corresponding claim elements. In particular:

- 1) each radiotelephone has already been assigned to be claim 6's "mobile-processing system."
- 2) the network control center **32** has already been assigned to be claim 6's "local server;"
- 3) any one of the base stations **12, 14, 16, 18** has already been assigned to be claim 6's "stationary transceiver;"

It is therefore unclear what remains in the cited passage of *Orlen* that one might possibly construe as an "access control unit" that is both (1) in communication with the network control center **32** (i.e. claim 6's "local server"), and (2) controlled on the basis of an identity of a radiotelephone (i.e. claim 6's "mobile processing system").

The Examiner has not indicated that *Sirag* remedies the above deficiency in the teaching of *Orlen*. Accordingly, the section 103 rejection of claim 6 is improper.

Summary

A fee for the appeal brief was paid on January 22, 2007. The Office has re-opened prosecution *sua sponte*. Accordingly, no fee is believed to be due in connection with the filing of this appeal brief. However, to the extent a fee may be due, or if a refund is forthcoming, please apply the adjust our Deposit Account No. 06-1050, referencing Attorney Docket No. 09651-014001.


¹³ *Orlen*, col. 3, lines 13-34.

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Respectfully submitted,

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Appendix of Claims

- 1.** A communication system comprising:

a stationary transceiver defining an information portal in a vicinity thereof; and

a local server in communication with said transceiver, said local server being configured

to respond to entry of a mobile processing-system present within said information portal, and

to provide, to said mobile processing system, data previously requested for said mobile processing system prior to entry of said mobile processing system into said information portal.
- 2.** A communication system comprising

a stationary transceiver defining an information portal in a vicinity thereof;

a local server in communication with said transceiver, said local server being configured

to identify and respond to a mobile processing-system present within said information portal, and

to perform a function on the basis of the identity of said mobile processing-system, said function being selected from the group consisting of:

permitting building access to a portion of said building; and

controlling an elevator in said building.
- 6.** The communication system of claim **2**, further comprising an access control unit in communication with said local server, said access control unit being controlled by said local server on the basis of the identity of said mobile processing-system.

7. The communication system of claim **1**, wherein said stationary transceiver is selected from the group consisting of a radio transceiver, an optical transceiver, an infrared transceiver, and an acoustic transceiver.
8. The communication system of claim **1**, wherein said stationary transceiver is disposed at a location selected from the group consisting of an elevator, a building lobby, and a vehicle.
9. The communication system of claim **1**, wherein said local server and said stationary transceiver are in communication across a local area network.
10. The communication system of claim **1**, wherein said local server and said stationary transceiver are in wireless communication across a local area network.
11. The communication system of claim **1**, further comprising a fulfillment server in communication with said local server, said fulfillment server having access to a wide area network.
12. The communication system of claim **11**, wherein said local server comprises a cache for temporary accumulation of information from said fulfillment server to be relayed to said mobile processing system.
13. The communication system of claim **11**, wherein said wide area network comprises a global computer network.
14. The communication system of claim **11**, wherein said fulfillment server includes a user-interface for enabling a user to cause said fulfillment server to collect selected information.
15. The communication system of claim **14**, wherein said fulfillment server is configured to provide said selected information to said local server when said local server identifies, within said information portal, a mobile processing unit associated with said user.

- 16.** The communication system of claim **14**, wherein said fulfillment server includes a user-interface for enabling a user to cause said fulfillment server to detect an occurrence of a condition.
- 17.** The communication system of claim **16**, wherein said fulfillment server is configured to provide information indicative of an occurrence of said condition to said local server when said local server identifies, within said information portal, a mobile processing unit associated with said user.
- 18.** The communication system of claim **16**, wherein said fulfillment server is configured to provide interactive services to said mobile processing unit.
- 19.** A communication system comprising:

 - a plurality of stationary transceivers, each configured for wireless communication with a mobile processing system present in a corresponding information portal; and
 - a server system in communication with each of said stationary receivers, said server system having a link to a global computer network and thereby providing said mobile processing system with wireless access to said global computer network said server system including a server configured to provide, to said mobile processing system, in response to entry of said mobile processing system into an information portal, data previously requested for said mobile processing system prior to entry of said mobile processing system into said information portal.
- 20.** A method for providing a mobile processing system with wireless access to a global computer network, said method comprising:

 - maintaining an information portal;
 - establishing wireless communication between said mobile processing system and a server system following entry of said mobile processing system into said information portal; and

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causing data previously requested for said mobile processing system prior to entry of said mobile processing system into said information portal to be provided to said mobile processing system, in response to entry of said mobile processing system into said information portal.

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Evidence Appendix

None

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Related Proceedings Appendix

None